

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

RICHARD C. TOLBERT

Plaintiff

vs.

**KEVIN ROBERTS, Warden, and
LAVERNE JOHNSON, Lt.,**

Defendants.

:
:
:
:
:
:
:
:
:
:

1:04-CV-72(WLS)

RECOMMENDATION

Presently pending is plaintiff's motion to consolidate case number 1:05-CV-05(WLS) which was initially styled Richard Cordell Tolbert vs. Commissioner James Donald,¹ Kevin Roberts, Warden, George Luster, Deputy Warden, and Sgt Lemax with the instant case.

A review of the complaints reveals that the plaintiff is making almost identical allegations in both cases and all of the defendants are or were employed at Lee State Prison. In fact in the instant case the plaintiff has filed a motion to correct the name of Steve Luster to Steve Lasiter. In his amended complaint in the instant case (document # 12) in addition to the two above captioned defendants plaintiff also lists Steve Lasiter and Sgt Lemax.

It is therefore the RECOMMENDATION that these two civil actions be consolidated into one case and that case number 1:04-CV-72(WLS) be the lead case. It is also FURTHER RECOMMENDED that Steve Lasiter and Sgt. Lemax be added as defendants in this civil action and that they be served with a copy of the complaint and other pertinent documents herein.

¹This matter was initially filed in the United States District Court for the Northern District of Georgia. By order dated December 2, 2004, the Honorable Charles A. Moye, Jr., dismissed Commissioner James as a party hereto and ordered the case transferred to this district where venue is proper.

In case number 1:05-CV-05 plaintiff also makes allegations of a crop dusting airplane flying over the prison and apparently spraying agricultural chemicals, which according to plaintiff creates a health hazard and could subject plaintiff to irreparable harm. Plaintiff does not allege that he has been harmed thereby not does he indicate which of the defendants he seeks to hold liable for this claim. In regard to the air plane claim plaintiff has not alleged a constitutional violation. It is therefore the FURTHER RECOMMENDED that the air plane claim be dismissed from this civil action.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, Chief United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 4th day of April 2005.

/s/ Richard L. Hodge
RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE